

EXHIBIT I

In the Matter Of:
VANDERBILT UNIVERSITY vs
SCHOLASTIC

MATTHEW EZELL
November 09, 2020



1 M. EZELL

2 record.

3 MS. MAYNARD: Could we put

4 Exhibit 5 back up, please?

5 BY MS. MAYNARD:

6 Q. Mr. Ezell, before our break we
7 established that this is the document from
8 which the test cell stimulus was drawn,
9 right?

10 A. That's correct.

11 Q. And how did you decide to draw
12 the stimulus from this particular document?

13 A. I first reviewed a variety of
14 documents, including this one, those other
15 documents that are mentioned in materials
16 considered and I found that many of them
17 have an alleged infringing use of
18 Vanderbilt's name or logo.

19 And ultimately I decided on this
20 document because it was not over 100 pages,
21 for one, that was I felt going to be too
22 overwhelming to respondents and we would
23 likely not get them to complete any survey
24 of that length.

25 Ultimately, this was one of the

1 M. EZELL
2 documents that I felt was a doable length,
3 and I selected the first six pages from
4 this document because they were contiguous
5 six pages that included the alleged
6 infringing use of Vanderbilt's name and
7 logo and also included some context as to
8 where that slide came.

9 So you could clearly see that
10 this was a System 44 -- a piece of
11 promotional material for System 44 before
12 you could see the slide that contains the
13 alleged infringement.

14 Q. In your answer you said that
15 there were other documents you considered
16 that were over 100 pages and you felt those
17 were too overwhelming, is that right?

18 A. That's correct. The 1135, which
19 I misremembered as the source for the test
20 cell stimulus, that 117 pages, for example,
21 I felt would be too overwhelming to
22 internet survey respondent -- yes, you want
23 to recreate what respondents may have seen
24 in a presentation, but at the same time 117
25 pages, I think, would be beyond the

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2 | patience of survey respondents.

3 Q. Just so we're clear, what was,
4 what is too overwhelming 117 pages?

5 A. Oh, just the length of it itself.

6 I think asking a respondent to review a
7 document that takes a minute or two, a
8 couple of minutes is probably reasonable in
9 an internet survey and something that takes
10 a half an hour or one hour is probably
11 unreasonable for most survey respondents to
12 have the patients to sit through that.

13 Q. So your expectation is that if
14 the document was 117 pages, survey
15 respondents may not have finished the
16 survey?

17 A. That was a concern that I had,
18 that the incidence rate, that means how
19 many people you have to recruit or invite
20 to the survey would be exceedingly low,
21 meaning I'd have to say let's invite 1,000
22 people to get 100 completes or 400
23 completes instead of a more reasonable
24 number of invites.

25 0. And you just said that that was

